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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

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No. 136

RICHARD H. M. SWANN,
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida,

Appellees.

On Appeal from the United States District Court for the Southern District of Florida

BRIEF OF APPELLEES

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On Appeal from the United States District Court for the Southern District of Florida

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BRIEF OF APPELLEES

OPINIONS BELOW

The opinion and order appealed from entered on March 18, 1966, by the United States District Court for the Southern District of Florida are unreported, wherein the District Court ruled that House Bill 17-X (66) met Federal constitutional standards and was accepted by the Court as the standard to be used in selecting members by the 1967 session of the Florida legislature. This opinion and order are printed herein as Appendix A.

Earlier opinions and orders in this case are:

(a) *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla. 1962).

(b) *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla. 1963).

(c) *Swann v. Adams*, 378 U.S. 553, 12 L. Ed. 2d 1033, 84 Sup. Ct. 1904 (1964).

(d) *Swann v. Adams*, No. 186-62-M-CIVIL-DD (S.D. Fla. 1965).

Listed herein as Appendix B.

(e) *Swann v. Adams*, 383 U.S. 210, 15 L. Ed. 2d 707, 86 Sup. Ct. 767 (1966). Listed herein as Appendix C.

STATEMENT OF JURISDICTION

This Appellee accepts the Appellants' Statement of Jurisdiction as listed on pages 2-3 of their Brief.

STATUTES INVOLVED

The constitutionality of H.B. 17-X (66), Chapter 66-1, Laws of Florida. This enactment is printed herein as Appendix D.

QUESTIONS PRESENTED

I. Does the approval of House Bill 17-X (66), Chapter 66-1, Laws of Florida, by the lower Court constitute an abuse of discretion vested in said Court, absent an affirmative showing that said plan is invidiously discriminatory?

II. Do the Appellants have any further legal standing to maintain this appeal where they have not shown that they have been harmed by the ruling of the lower Court?

III. Does the "grandfathering" or holding over of certain Senators with unexpired terms while other similarly situated Senators, by their own choice, were not held over, comply with the equal protection of the law clause of the Fourteenth Amendment?

SUMMARY OF ARGUMENT

The approval of House Bill 17-X (66) by the lower court does not constitute an abuse of discretion vested in said court, since there is a complete absence of any affirmative showing by the Appellants that said plan is invidiously discriminatory. The Appellants do not have any further legal standing to maintain their appeal when they have not shown that they have been harmed by the ruling of the lower court. This is particularly true since the Appellants originally filed their complaints as voters of Dade County and the new plan shows very little deviation with respect to Dade County. The "grandfathering" or holding over of certain Senators with unexpired terms, while other similarly situated Senators, by their own choice, were not held over complies with the equal protection of the law clause of the Fourteenth Amendment to the Federal Constitution.

STATEMENT OF THE CASE

On February 25, 1966, this Court entered its opinion and order reversing the District Court's order of December 23, 1966,

which held, inter alia, that the reapportionment of the state of Florida under House Bill 19-XX (65), although unconstitutional, would be accepted as an interim plan until sixty days after the adjournment of the 1967 regular session of the Florida Legislature. *Swann v. Adams*, 383 U.S. 210, 15 L.Ed.2d 707, 86 Sup.Ct. 767 (1966) (Appendix C). This Court in reversing and remanding the case to the District Court, made the following instructions:

> "We reverse and remand to the District Court so that a valid reapportionment plan will be effective for the 1966 elections."

Although the 25 day period for the issuance of the Court's mandate had not expired, the Governor of Florida on the following day, February 26, 1966, issued a call convening a Special Session of the State Legislature to commence March 2, 1966, to reconsider reapportionment legislation in line with the Court's ruling.

On February 28, 1966, the Appellants filed a joint petition asking the District Court to adopt and put into immediate effect the reapportionment plan previously submitted by the Appellants on July 6, 1965 (R. 16-35).

On March 1, 1966, the lower court deferred hearing the Appellants' joint petition before-mentioned for the reason that the mandate of the Supreme Court had not issued on its Order dated February 25, 1966 (R. 36).

Although not part of the official transcript of record but found in this Court's file, the Appellees by their attorney advised the clerk that the Appellees would not file a petition for rehearing on the Order of February 25, 1966, and requested the issuance of judgment in order to expedite valid reapportionment. On the same date of March 2, 1966, the Special Session of the State Legislature convened to consider reapportionment legislation.

On March 7, 1966, a certified copy of this Court's judgment was filed in the District Court (R. 37-38), and on March 8, 1966, the District Court set hearing on March 15, 1966, of all matters pending and undisposed of in the above styled cause (R. 39).

On March 9, 1966, two days subsequent to the filing of this Court's Judgment in the District Court, the Special Session of the State Legislature enacted H.B. 17-X (66), Chapter 66-1, Laws of Florida, which was signed into law by the Governor of Florida on March 10, 1966 (R. 44-56). Pertinent features of this enactment are as follows:

(1) It provides for a bicameral legislature of 48 senators and 117 representatives.

(2) The maximum population variance ratio in the reapportioned Senate of Florida is 1.30 to 1. 48.61 per cent of the population elect 50 per cent of the Senate. The average population per Senator is 103,158. The smallest senatorial district is 87,847 and the largest is 114,053, or a maximum population variance ratio of 1.30 to 1 (Appendix E-1).

(3) The maximum population variance ratio in the reapportioned House of Representatives is 1.41 to 1. 50.43 per cent of the population elect 50.43 per cent of the House of Representatives. The average population per member is 42,321. The smallest representative district is 34,584, and the largest is 48,785, or a maximum population variance ratio of 1.41 to 1 (Appendix E-2).

(4) With respect to the percentile variation, only one senatorial district exceeds 15 per cent with a maximum of 15.09 per cent under average variation (Appendix E-1). In the House, an analysis of the variation indicates that three house districts exceed 15 per cent, with a maximum variance of 18.28 per cent under average variation. The three districts in the House make

up a relatively small number totalling 7 members of the 117 member House of Representatives.

On March 14, 1966, this Appellee moved the District Court to approve and adopt H.B. 17-X (66), Chapter 66-1, Laws of Florida, as meeting the Supreme Court's standards for valid reapportionment of the state of Florida (R. 41-42).

On March 15, 1966, hearing was held on all pending matters and oral argument and exhibits were presented by counsel for the Appellants and the Appellees (R. 87-106).

On March 18, 1966, the District Court entered its opinion and order declaring H.B. 17-X (66) constitutional and refused to enjoin its application (R. 77-79). In this Order the Court adjudged the following:

> "The plan of apportionment of the Florida legislature, as found in H.B. 17-X (66), enacted in March, 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida legislature." (R. 79)

It is from this order that the Appellants are now before this Court requesting that it take jurisdiction over this matter and are assailing the provisions of H.B. 17-X (66) as being unconstitutional.

Since the decision of the District Court there have been two primary elections in which candidates have qualified and been elected as representative members of their respective parties and there has been a general election for the purpose of selecting state legislators in accordance with H.B. 17-X (66). The candidates that have been chosen at the general election are now officially in office. The regular session of the newly constituted legislature in accordance with H.B. 17-X (66) will

commence on the first Tuesday after the first Monday in April, 1967.

The Appellees are confident that the arguments presented herein will demonstrate that the lower Court did not abuse its discretion in approving H.B. 17-X (66) and that the Appellants have not been harmed in any way and have no further standing in this cause.

I

DOES THE APPROVAL OF HOUSE BILL 17-X (66), CHAPTER 66-1, LAWS OF FLORIDA, BY THE LOWER COURT CONSTITUTE AN ABUSE OF DISCRETION VESTED IN SAID COURT, ABSENT AN AFFIRMATIVE SHOWING THAT SAID PLAN IS INVIDIOUSLY DISCRIMINATORY?

This Court in a multitude of reapportionment cases that have been before it has furnished guidelines for a lower court in reviewing a state reapportionment statute succinctly stated as follows:

". . . (A)n individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a *substantial fashion* diluted when compared with votes of citizens living in other parts of the State." *Reynolds v Sims*, 377 U.S. 533, 568. (Emphasis added.)

"So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportion-

ment of seats in either or both of the two houses of a bicameral state legislature."
Reynolds v Sims, 377 U.S. 533, 579.

". . . (T)he proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." *Roman v Sincock*, 377 U.S. 695, 710.

"We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement." *Reynolds v Sims*, 377 U.S. 533, 577 (footnote omitted).

These Appellees respectfully submit that the foregoing language when read in the context of the opinions from which it is taken with the applicable principles in establishing guidelines for the placing of the burden of proof in reapportionment cases, in those instances where a statute has been passed with the express purpose of complying with the requirements of the equal protection clause, will show that the following standards are applicable:

1. The attacker must prove that the weight of an individual's vote for state Legislators when compared with votes of individuals living in other parts of the state has been diluted in a substantial fashion.

2. The attacker would clearly have to prove a substantial dilution to the point of being invidiousness per se.

3. In the absence of proof of being invidiousness per se, there must be shown divergences from a strict population standard that are not based on any legitimate consideration incident to the effectuation of a rational state policy.

4. The attacker must show that certain minor deviations to be impermissible would have to be based upon arbitrary and discriminatory reasons, based on factors which could not be justified on a rational ground.

The Appellants contend primarily that the reapportionment act of the State of Florida is invalid due to the fact that it contains deviations which in the Appellant's mind exceed "maximum permissive deviation" for maximum voter equality. It is urged that the Legislature of the State of Florida in enacting HB 17-X was knowledgeable of the exising reapportionment facts of Florida and enacted a reapportionment plan promoting the interest of the people as a whole, and which act the Court should not lightly declare unconstitutional. See *Atchison, T. & S. F. R. Co. v. Matthews*, 174 U.S. 96, 104, 43 L.Ed. 909, 19 Sup.Ct. 609 (1899); *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1966).

It is respectfully submitted that the function of this Honorable Court is to gauge the validity of the apportionment plan approved below, whether or not the Legislature might have made a better or wiser choice is not a justiciable question to be urged in this appeal. The concern of the Federal Constitution is not what might have been done but that which actually was done. See *Sincock v. Roman*, 233 F.Supp., 615, 61 (D.Del. 1964); *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1966); *Dunglin v. Sawyer*, 253 F.Supp. 352 (D.Nev. 1966).

There seems to be little argument that certain deviation is permissible to justify disparities from population-based representation on the effectuation of a rational state policy. The

integrity of various politicl subdivisions, districts of contiguous territories with a common interest, all appear to be reasons for disparities.

The Appellees do not urge that both houses of a state legislature need not be apportioned on a population basis. However, it is respectfully submitted that where a state makes an honest and good faith effort to construct districts in both houses of its legislature as nerly as equal in population as practical, absent a showing of pure invidious discrimination, the plan should not be discared.

This Honorable Court and many Federal District Courts reviewing reapportionment problems have considered and determined that whea here is no showing that a plan is invidious per se, the movant nust clearly show that the plan is one that would otherwise derive the complaining party of constitutional standards, sucl as partisan gerrymandering, racial discrimination and the distgard for natural or political boundaries. There is no such cotention made in the case at bar. The Appellants allege onlythat there has been a plan devised by the Florida Legislature o discriminate against urban communities of the State of Floria.

It is respectfly submitted by the Appellees that the following chart willshow that no such discrimination was practiced.

HOUSE DISTRICTS

Variance: Under 5%	% of State Population	Counties
(1) + 2.68	3.51	Escambia
(2) + 3.09	.73	Jackson
	.15	Calhoun
(3) + 1.67	1.50	Leon
	.11	Wakulla
	.13	Franklin
(4) — 2.17	9.20	Duval
(5) — 0.81	.19	Citrus
	.23	Hernando
	1.04	Marion
	.24	Sumter
(6) — 1.29	2.53	Volusia
(7) + 4.44	8.03	Hillsborough
(8) — 1.64	7.57	Pinellas
(9) + 3.92	.51	Indian River
	.34	Martin
	.13	Okeechobee
	.79	St. Lucie
(10) — 1.37	6.74	Broward
(11) + 0.43	18.88	Dade
Total % of State Popul. (Under 5% Var.)	62.55%	

HOUSE DISTRICTS

Variance: 5%-10%	% of State Population	Counties
(1) — 8.95	1.36	Bay
	.20	Gulf
(2) + 7.18	1.24	Okaloosa
	.60	Santa Rosa
(3) + 6.63	.85	Gadsden
	.06	Liberty
(4) — 6.17	.16	Hamilton
	.30	Suwannee
	.29	Madison
	.06	Lafayette
(5) + 5.45	.35	Nassau
	.15	Baker
	.41	Columbia
(6) + 7.25	.24	DeSoto
	.25	Hardee
	.43	Highlands
(7) — 9.15	1.55	Sarasota
(8) + 7.80	4.61	Palm Beach
Total % of State Popul. (5%-10% Var.)	13.11%	

HOUSE DISTRICTS

Variance 10%-15%	% of State Population	Counties
(1) — 10.99	.22	Holmes
	.31	Walton
	.23	Washington
(2) — 11.26	.19	Jefferson
	.09	Dixie
	.27	Taylor
	.21	Levy
(3) — 14.03	.06	Gilchrist
	.65	Putnam
	1.50	Alachua
(4) — 10.15	.12	Union
	.25	Bradford
	.39	Clay
(5) — 11.53	1.16	Lake
	1.11	Seminole
(6) — 13.08	.74	Pasco
(7) — 12.23	2.25	Brevard
(8) + 11.28	5.32	Orange
	.38	Osceola
(9) + 11.00	.25	Charlotte
	.32	Collier
	.06	Glades
	.16	Hendry
	1.10	Lee
(10) + 13.23	.97	Monroe
Total % of State Popul. (10%-15% Var.)	18.31%	

HOUSE DISTRICTS

Variance Over 15%	% of State Population	Counties
(1) — 18.24	.09	Flagler
	.61	St. Johns
(2) — 18.28	1.40	Manatee
(3) + 15.27	3.94	Polk
Total % of State Popul. (Over 15% Var.)	6.04%	

HOUSE DISTRICTS

Total % of State Popul. Under	5%	62.55%
Total % of State Popul.	5%-10%	13.11%
Total % of State Popul.	10%-15%	18.31%
Total % of State Popul. Over	15%	6.04%
		100.01%

SENATE DISTRICTS

Variance Under 5%	% of State Population	Counties
(1) — 1.46	3.51	Escambia
	.60	Santa Rosa
(2) — 0.15	.61	St. Johns
	.09	Flagler
	2.53	Volusia
	1.11	Seminole
	1.16	Lake
	.38	Osceola
	.24	Sumter
	1.04	Marion
	.19	Citrus
	.23	Hernando
	.74	Pasco
(3) — 3.60	8.03	Hillsborough
Total % of State Popul. (Under 5% Var.)	20.46%	

SENATE DISTRICTS

Variance 5%-10%	% of State Population	Counties
(1) + 7.57	.73	Jackson
	.15	Calhoun
	.85	Gadsden
	.06	Liberty
	.13	Franklin
	.11	Wakulla
	1.50	Leon
	.19	Jefferson
	.29	Madison
	.27	Taylor
	.09	Dixie
	.06	Lafayette
	.30	Suwannee
	.16	Hamilton
	.41	Columbia
	.06	Gilchrist
	.21	Levy
	1.50	Alachua
	.65	Putnam
	.39	Clay
	.12	Union
	.25	Bradford
	.15	Baker
	.35	Nassau
(2) + 8.02	2.25	Brevard
(3) — 9.20	7.57	Pinellas
(4) — 7.20	1.40	Manatee
	1.55	Sarasota
	.25	Hardee
	.24	DeSoto
	.43	Highlands
(5) — 5.42	3.94	Polk

(6)	— 8.92	.25	Charlotte
		.06	Glades
		.16	Hendry
		1.10	Lee
		.32	Collier
(7)	+ 7.91	6.74	Broward
(8)	+ 5.88	18.88	Dade
		.97	Monroe
	Total % of State Popul. (5%-10% Var.)	55.09%	

SENATE DISTRICTS

Variance 10%-15%		% of State Population	Counties
(1)	— 14.39	.23	Washington
		1.36	Bay
		.20	Gulf
(2)	+ 10.37	9.20	Duval
(3)	— 14.84	5.32	Orange
(4)	— 14.73	.51	Indian River
		.13	Okeechobee
		.79	St. Lucie
		.34	Martin
(5)	+ 10.56	4.61	Palm Beach
	Total % of State Popul. (10%-15% Var.)	22.69%	

SENATE DISTRICTS

Variance Over 15%	% of State Population	Counties
(1) — 15.09	1.24	Okaloosa
	.31	Walton
	.22	Holmes
Total % of State Popul. (Over 15% Var.)	1.77%	

SENATE DISTRICTS

Total % of State Population Under	5%	20.46%
Total % of State Population	5%-10%	55.09%
Total % of State Population	10%-15%	22.69%
Total % of State Population Over	15%	1.77%
		100.01%

The foregoing analysis is graphically demonstrative that the Legislature of Florida was based purely on the population criteria. As this Court stated, the Legislators are elected by voters, not farms or cities or economic interests. See *Reynolds v. Sims*, 377 U.S. 533, 580, 12 L.Ed.2d 506, 84 Sup.Ct. 1362 (1964).

The real criteria by which one man's vote can be measured against another is what voice that vote has in the election of the total legislative membership. This standard seems readily apparent in an analysis of the various reapportionment cases decided by the state and federal courts in examining the individual state plans as shown below:

COLORADO

SENATE: Maximum population variance ratio—1.46 to 1
48.2% of the population elect a majority

HOUSE: Maximum population variance ratio—1.73 to 1
45.4% of the population elect a majority

In *Lucas v. Forty-Fourth General Assembly*, 232 F.Supp. 797 (D.Colo. 1964) the Court approved the legislative plan. The decision was affirmed as to the federal questions in *Forty-Fourth General Assembly v. Lucas*, 379 U.S. 693, 13 L.Ed.2d 699, 85 Sup.Ct. 715 (1966). Previously, in *Lucas v. Colorado General Assembly*, 377 U.S. 713, 12 L.Ed.2d 632, 84 Sup.Ct. 1472 (1964) this Honorable Court, referring to the Colorado House Districts in which there was a maximum population variance ratio of 1.7 to 1, stated:

> ". . . Initially, one house of the Colorado Legislature is at least arguably apportioned substantially on a population basis. . . ." 377 U.S. 713, 730.

GEORGIA

SENATE: Maximum population variance ratio—1.81 to 1
48.2% of the population elect a majority

HOUSE: Maximum population variance ratio—2.003 to 1
42.341% of the population elect a majority

In *Toombs v. Fortson*, 241 F.Supp. 65 (N.D.Ga. 1965), the Court approved this legislative plan on an interim basis until May 1, 1968. This was affirmed in *Toombs v. Fortson*, 384 U.S. 210, 16 L.Ed.2d 482, 86 Sup.Ct. 1464 (1966). After the decision in *Swann v. Adams* on February 25, 1966, the Court shortened the time to May 1, 1967. See *Toombs v. Fortson*, Civil No. 7,883 (N.D.Ga. 1966).

MONTANA

SENATE: Maximum population variance ratio—1.45 to 1
46.8% of the population elect a majority

HOUSE: Maximum population variance ratio—1.66 to 1
47.9% of the population elect a majority

In *Herweg v. Thirty-Ninth Legislative Assembly*, 246 F. Supp. 454 (D.Mont. 1965) the Court provided an apportionment scheme for both houses of the Legislature.

NEVADA

SENATE: Maximum population variance ratio—1.47 to 1
49.7% of the population elect a majority

HOUSE: Maximum population variance ratio—1.53 to 1
46.8% of the population elect a majority

In *Dungan v. Sawyer*, 253 F.Supp. 352, (D.Nev. 1966) the Court approved the legislative plan.

TENNESSEE

SENATE: Maximum population variance ratio—1.38 to 1
48.38% of the population elect a majority

HOUSE: Maximum population variance ratio—1.51 to 1
46.36% of the population elect a majority

In *Baker v. Carr*, 247 F.Supp. 629 (M.D.Tenn. 1965) the Court approved the legislative reapportionment of both houses.

UTAH

SENATE: Maximum population variance ratio—1.74 to 1
44.5% of the population elect a majority

HOUSE: Maximum population variance ratio—1.55 to 1
47.7% of the population elect a majority

In *Petuskey v. Rampton*, 243 F.Supp. 365 (D.Utah 1965) the Court approved the legislative plan which under-represented the five (5) largest counties in both houses.

VERMONT

SENATE: Maximum population variance ratio—1.60 to 1
48.8% of the population elect a majority

HOUSE: Maximum population variance ratio—1.30 to 1
48.7% of the population elect a majority

In *Buckley v. Hoff*, 243 F.Supp. 873 (D.Vt. 1965) the Court approved the legislative plan.

VIRGINIA

SENATE: Maximum population variance ratio—1.37 to 1
48.2% of the population elect a majority

HOUSE: Maximum population variance ratio—1.53 to 1
48.2% of the population elect a majority

The legislative plan of reapportionment for both houses was upheld in *Mann v. Davis*, 245 F.Supp. 241 (E.D.Va. 1965) aff. *Burnette v. Davis*, 382 U.S. 42, 15 L.Ed.2d 35, 86 Sup.Ct. 181 (1965).

WASHINGTON

SENATE: Maximum population variance ratio—1.45 to 1
47.6% of the population elect a majority

HOUSE: Maximum population variance ratio—1.62 to 1
46.7% of the population elect a majority

In the unreported decision of *Thigpen v. Kramer*, Civil No. 5,597 (W.D.Wash. 1965) the Court approved the legislative plan of apportionment.

WISCONSIN

SENATE: Maximum population variance ratio—1.36 to 1
48.4% of the population elect a majority

HOUSE: Maximum population variance ratio—2.35 to 1
45.4% of the population elect a majority

The Wisconsin Supreme Court in *State v. Zimmerman*, 128 N.W.2d 16 (1964) provided a reapportionment scheme for both houses of the state legislature.

WYOMING

SENATE: Maximum population variance ratio—2.08 to 1
44.0% of the population elect a majority

HOUSE: Maximum population variance ratio—2.59 to 1
48.0% of the population elect a majority

The Court upheld the apportionment of the House in *Schaefer v. Thomson*, 240 F.Supp. 247 (D.Wyoming 1964). In *Schaefer v. Thomson*, 251 F.Supp. 450 (D.Wyoming 1965) the Court provided an apportionment scheme for the Senate. This decision was affirmed per curiam in *Harrison v. Schaefer*, 383 U.S. 269, 15 L.Ed.2d 750, 86 Sup.Ct. 929 (1966).

(The statistical information for Colorado, Virginia and Washington were not found in the Court opinions but were furnished these Appellees by the Attorney General of these respective states. The statistical information for the Georgia reapportionment scheme is found in the unreported decision of March 21, 1966. The statistical information given on the reap-

portionment plans of the remaining states is either set out in the respective opinions or is a computation from facts set forth in those opinions.)

It is thus apparent that the entire plan of reapportionment is to be considered as to whether or not a legislative reapportionment plan will meet constitutional muster, not mere mathematical deviations which are subject to subjective analysis.

The Florida Legislature followed in most instances the Congressional boundaries for the election and districting of members of the House of Representatives in Florida and there simply is no showing before this Court by the argument made in the Appellant's brief that this is an invalid, illegal or unconstitutional standard from which the pattern of reapportionment in Florida has been cut. The Appellees feel that it cannot be substantively shown that the overall scheme of reapportionment in Florida is clothed and tainted with arbitrariness or discrimination, but that the Legislature of Florida enacted a reapportionment plan that has faithfully adhered to a population based representation with such minor deviations only as may occur in recognizing Congressional District boundaries and contiguousness.

In the Florida House plan 50.43% of the people of the State of Florida elect 50.43% of the House of Representatives. This is a total population variance ratio of 1.41 to 1. In the Senate plan 48.61% of the people of the State of Florida elect 50% of the Senate. This is a total population variance ratio of 1.30 to 1.

It has been contended by amicus curiae that political and racial elements will be effectively disenfranchised by HB 17-X in that the votes of residents of small counties will be substantially diluted. It has been repeatedly held that there is no right per se for a political group or a minority group to elect one of their number and a statute will not be held unconstitutional in the absence of a showing that the act was so drawn in order

to prevent the opportunity to elect one of their number. Appellees respectfully submit that there has been no such showing. See *Wright v. Rockefeller* 376 U.S. 52, 11 L.Ed.2d 512, 84 Sup. Ct. 603 (1964); *Mann v. Davis*, 245 F.Supp. 241 (E.D.Tenn. 1965) aff. *Burnette v. Davis* 382 U.S. 42, 15 L.Ed.2d 35, 86 Sup.Ct. 181 (1966).

It is therefore respectfully submitted that the Legislative plan of Florida complies with the mandates, directions and guidelines, that have been recognized by this Court and Three-Judge Federal Courts in arriving at constitutional reapportionment throughout the nation.

II

DO THE APPELLANTS HAVE ANY FURTHER LEGAL STANDING TO MAINTAIN THIS APPEAL WHERE THEY HAVE NOT SHOWN THAT THEY HAVE BEEN HARMED BY THE RULING OF THE LOWER COURT?

Your Appellees respectfully submit that this question is a prime issue in this cause and should be answered in the negative.

There is a fundamental rule of law that no person may seek the aid of the courts, state or federal, to rule upon a question unless such a person has a direct, immediate, or personal interest to be preserved. The remaining Appellants in this cause have maintained their position in this suit because they had presented a class action for themselves and other persons similarly situated in Dade County, Florida. Your Appellees respectfully submit to the Court that further analysis of House Bill 17-X (66) would indicate that in the Senate plan the variation in the Senatorial Districts affecting Dade County reveal that there is a 5.88% variation in over-representation. In the House of Representatives the plan is more nearly perfect in that

there is only 0.43% variation from an average representation. Your Appellees submit that there has been no showing that there has been any harm done to the Appellants or other similarly situated voters in Dade County.

The rule that a person may not seek the aid of the judiciary to rule upon a question unless the person has a direct, immediate and personal interest to be served or there is a showing that such person will be harmed has been applied in reapportionment cases. [See *Stout v. Bottorff*, 246 F.Supp. 825 (S.D.Ind. 1965) wherein a resident of Marion County, and a member of the Senate of the 94th General Assembly of Indiana, was without standing to assert that the 1965 Apportionment Act was invalid because it diluted votes of some residents of other parts of the state, where he made no complaint of debasement of his vote or those of Marion County voters generally.]

The Appellees concede that the Appellants had standing in this case prior to these proceedings because they had demonstrated to the courts the unconstitutionality of apportionment of the State of Florida as it applied to them as residents of Dade County; but there is another fundamental rule concerning "standing" which provides that with respect to appellate jurisdiction every party desiring to appeal from a judgment must be injured, prejudiced or aggrieved by the terms of the judgment sought to be appealed.

> "It is a fundamental rule of appellate jurisdiction that every person desiring to appeal from a decree must be interested in the subject-matter of the litigation, and the interest must be immediate and pecuniary and not a remote consequence of the judgment. The interest must be substantial, and a merely nominal party to an action cannot appeal. *The interest must also be subsisting, for although a party may have an appealable interest at the commencement of the suit, if that interest has terminated before the entry of the*

judgment or decree sought to be appealed from, he cannot appeal." (Emphasis supplied)

(*Hamilton Trust Co. v. Cornucopia Mines Co.*, 223 F. 494, 499 (CCA 9th 1915) cert. den. 239 US 641, 60 L.Ed. 482, 36 Sup.Ct. 161 (1915).

"The defendant makes some attempt to claim the right by this appeal to vindicate what it calls the public interest. But, as regards the public interest, the defendant is a mere volunteer. With no claim of any special relationship to the issue it seeks to litigate it has no more status to represent the public interest than any man off the streets. * * *

"Authority is hardly needed for a proposition so obvious as that one who has no interest in the litigation, and who asserts no right which has been adversely affected by the decision of the lower court, cannot appeal from that decision. * * *"

(*Sperry-Rand Corp. v. Bell Telephone Laboratories, Inc.*, 317 F.2d 491, 493 (CCA 2d 1963).

In considering the foregoing cases and the analysis of House Bill 17-X (66) with respect to the position of the Appellants and other persons similarly situated in Dade County, it is obvious that the Appellants no longer have standing or an interest in the decision that they seek to have reviewed by this Court.

III

DOES THE "GRANDFATHERING" OR HOLDING OVER OF CERTAIN SENATORS WITH UNEXPIRED TERMS WHILE OTHER SIMILARLY SITUATED SENATORS, BY THEIR OWN CHOICE, WERE NOT HELD OVER, COMPLY WITH THE EQUAL PROTECTION

OF THE LAW CLAUSE OF THE 14th AMENDMENT?

Your Appellees submit that the above question is more comprehensive than that propounded by the Appellants in their brief and should be answered in the affirmative.

The Appellants in their brief have stated under question III that three senators were grandfathered in or held over from the previous Senate. These were the Senators from Orange, Palm Beach and Polk counties. These three Senators were from constituencies that were unchanged geographically from those existing in the previous reapportionment plan. The Appellants also allude to the fact that there were three other Senators who were not grandfathered in and whose terms had not expired under the previous apportionment plan and whose constituencies remained geographically unchanged in the newly enacted plan.

Your Appellees submit, however, that the Appellants omitted the fact that they had knowledge, or should have had knowledge, that the three Senators who were not grandfathered in were left out as a matter of their own choice. This is demonstrated by remarks of counsel for the Appellees at pages 101-102 of the Transcript of Record:

> "As far as the grandfather clauses and positions themselves, there is no grandfathering in these bills except in those senatorial districts where their constituencies have remained identical.
>
> "It is true that some of these senators were not grandfathered in and we respectfully submit that this was by choice of individual senators and it does not and should not, we feel, lessen the position that it is in and of itself not invidiously discriminatory. For there were odd numbered senators who were elected by the peo-

ple in their districts, in their particular districts, to serve a four year term and they are only completing those particular terms in those districts where the individual senator's constituency has not changed." (TR. 101-102)

Your Appellees respectfully submit that this Court has approved the "grandfathering" of legislators who are in a district where the constituency remains the same and whose normal elected term has not expired. See *Toombs v. Fortson*, 241 F. Supp. 65 (N.D. Ga. 1965) aff. 384 U.S. 210, 16 L.Ed.2d 482, 86 Sup.Ct. 1464 (1966).

This further gives rise to the legal proposition that the Appellants have shown that they have not been harmed by this legislative action by grandfathering or not grandfathering the three Senators, since Appellants are not constituents of any of the Senators involved in this enactment.

Your Appellees further submit that there has been no display of invidious discrimination in this respect and there is no violation of the equal protection of the law clause of the Fourteenth Amendment.

CONCLUSION

The Appellees respectfully submit that there has not been demonstrated in this appeal any abuse of discretion committed by the lower court, since the Appellants have completely failed to show that the minor deviations present in the plan are tainted with arbitrariness or any invidious discrimination in House Bill 17-X; and that the Appellants do not have any further legal standing to maintain this appeal; and the grandfathering or holding over of certain Senators with unexpired terms while other similarly situated Senators by their own choice, were not held over, complies with the equal protection of the law clause of the

Fourteenth Amendment to the Constitution of the United States.

Accordingly the decision of the lower court should be affirmed.

Respectfully submitted,

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The Capitol
Tallahassee, Florida

Counsel for Appellees.

APPENDICES

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical

exactness or precision is not required, of course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% overrepresented to 10.56% underrepresented, creating a ratio of 1.30 : 1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majority of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41 : 1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord*, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra*.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

WARREN L. JONES

United States Circuit Judge

WILLIAM A. McRAE, JR.

United States District Judge

DAVID W. DYER

United States District Judge

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more

senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's, with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose

of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisable to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been

drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "State make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed as applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an in-

terim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

Warren L. Jones
United States Circuit Judge

William A. McRae, Jr.
United States District Judge

David W. Dyer
United States District Judge

APPENDIX C

SUPREME COURT OF THE UNITED STATES

SWANN et al. v. ADAMS et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 973. Decided February 25, 1966.

PER CURIAM.

We previously remanded this case to the District Court for further proceedings in light of *Reynolds* v. *Sims*, 377 U. S. 533, and the other cases relating to legislative reapportionment decided with *Reynolds*, 378 U. S. 553. The District Court deferred action until the conclusion of the legislative session which convened on April 6, 1964, stating that it would reconsider its decision should the Florida Legislature fail to effect a valid reapportionment by July 1, 1965.

A reapportionment law was passed by the legislature on June 29, 1965. On July 6 the appellants filed a joint petition asking the District Court to declare the newly enacted plan unconstitutional and proposing an alternative plan. The District Court did not take action until October 5 when it ordered oral argument for November 2, 1965. On December 23 the District Court concluded that the newly passed reapportionment plan failed to meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in *Reynolds* v. *Sims* . . . ."

Although the District Court concluded that the plan did not comport with constitutional requirements, it approved the plan (making only minor changes) on an interim basis. Its approval was limited to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature.

We have no occasion to review the District Court's determination that the legislative reapportionment plan fails to meet constitutional standards. Indeed, Florida does not contend that the District Court erred in this regard, having conceded below that the plan was constitutionally deficient. We hold, however, that in approving the plan on an interim basis, the District Court erred. This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature to itself determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.

We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections.

Reversed.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART would affirm the judgment.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

APPENDIX D

Chapter 66-1

HOUSE BILL 17-X

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District—Escambia and Santa Rosa counties.

Second District—Escambia and Santa Rosa counties.

Third District—Okaloosa, Walton and Holmes counties.

Fourth District—Bay, Washington and Gulf counties.

Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Seventh District—Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District—Duval county.

Tenth District—Duval county.

Eleventh District—Pinellas county.

Twelfth District—Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District—Dade and Monroe counties.

Fourteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District—Dade and Monroe counties.

Eighteenth District—Duval county.

Nineteenth District—Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District—Orange county.

Twenty-First District—Hillsborough county.

Twenty-Second District—Hillsborough county.

Twenty-Third District—Hillsborough county.

Twenty-Fourth District—Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District—Polk county.

Twenty-Seventh District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District—Pinellas county.

Thirtieth District—Broward county.

Thirty-First District—Duval county.

Thirty-Second District—Pinellas county.

Thirty-Third District—Palm Beach county.

Thirty-Fourth District—Hillsborough county.

Thirty-Fifth District—Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District—Orange county.

Thirty-Seventh District—Brevard county.

Thirty-Eighth District—Pinellas county.

Thirty-Ninth District—Broward county.

Fortieth District—Dade and Monroe counties.

Forty-First District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District—Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the Secretary of State as of March 2, 1966, and any changes in the precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District—Dade and Monroe counties.

Forty-Fourth District—Dade and Monroe counties.

Forty-Fifth District—Dade and Monroe counties.

Forty-Sixth District—Dade and Monroe counties.

Forty-Seventh District—Dade and Monroe counties.

Forty-Eighth District—Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of the state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	*Number of Members*
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2
Jackson and Calhoun	1
Gadsden and Liberty	1
Leon, Wakulla, Franklin	2
Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3

Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6
Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

(2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that in the multi-county district of Lake and Seminole one representative shall be a resident of Lake county and one member shall be a resident of Seminole county and the other representative shall be a resident of either county; provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under Chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

APPENDIX E-1

48 Senatorial Districts

Maximum Population—Variance Ratio of 1.30 to 1

48.61% of the Population elects 50% of the Senate

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
1,2	Escambia & Santa Rosa	2	203,376	101,688	1.46	
3	Okaloosa, Walton & Holmes	1	87,595	87,595	15.09	
4	Washington, Bay & Gulf	1	88,317	88,317	14.39	
5,6,8,25	Jackson, Calhoun, Gadsden, Liberty, Franklin, Wakulla, Leon, Jefferson,					

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
	Madison, Taylor, Dixie, Lafayette, Suwannee, Hamilton, Columbia, Gilchrist, Levy, Alachua, Putnam, Clay, Union, Bradford, Baker & Nassau	4	443,885	110,971		7.57
9,10,18,31	Duval	4	455,411	113,853		10.37
14,15,16, 41	St. Johns, Flagler, Volusia, Seminole, Lake, Osceola, Sumter, Marion, Citrus, Hernando, & Pasco	4	412,021	103,005	0.15	
19,20,36	Orange	3	263,540	87,847	14.84	
37	Brevard	1	111,435	111,435		8.02
11,29,32, 38	Pinellas	4	374,665	93,666	9.20	

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Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
21,22,23, 34	Hillsborough	4	397,788	99,447	3.60	
27,28	Manatee, Sarasota, Hardee, DeSoto, & Highlands	2	191,454	95,727	7.20	
7,26	Polk	2	195,139	97,570	5.42	
12	Indian River, Okeechobee, St. Lucie & Martin	1	87,959	87,959	14.73	
24	Charlotte, Glades, Hendry, Lee & Collier	1	93,955	93,955	8.92	
33,35	Palm Beach	2	228,106	114,053		10.56
30,39,48	Broward	3	333,946	111,315		7.91
13,17,40, 42,43,44, 45,46,47	Dade & Monroe	9	982,968	109,219		5.88
		48	4,951,560			

APPENDIX E-2

117 Representatives

Average per Representative, 42,321. Maximum Population-Variance Ratio of 1.41 to 1, 50.43% of the Population elects 50.43% of the House.

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per Cent Variation	
				Under Aver.	Over Aver.
Bay and Gulf	2	77,068	38,534	8.95	
Escambia	4	173,829	43,457		2.68
Holmes, Walton and Washington	1	37,669	37,669	10.99	
Okaloosa and Santa Rosa	2	90,722	45,361		7.18
Jackson and Calhoun	1	43,630	43,630		3.09
Gadsden and Liberty	1	45,127	45,127		6.63
Leon, Wakulla, Franklin	2	86,058	43,029		1.67

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per cent Variation Under Aver.	Per cent Variation Over Aver.
Jefferson, Dixie Taylor, Levy	1	37,554	37,554	11.27	
Hamilton, Suwannee, Madison, Lafayette	1	39,709	39,709	6.17	
Gilchrist, Putnam, Alachua	3	109,154	36,385	14.03	
Union, Bradford, Clay	1	38,024	38,024	10.15	
Nassau, Baker Columbia	1	44,629	44,629		5.45
Duval	11	455,411	41,401	2.17	
Citrus, Hernando, Marion, Sumter	2	83,958	41,979	0.81	
Flagler, St. Johns	1	34,600	34,600	18.24	
Lake, Seminole	3	112,330	37,443	11.53	
Pasco	1	36,785	36,785	13.08	
Volusia	3	125,319	41,773	1.29	
Brevard	3	111,435	37,145	12.23	
Orange, Osceola	6	282,569	47,095		11.28

Counties	No. of Rep.	Total Pop.	Aver. Pop per Rep.	Per cent Variation	
				Under Aver.	Over Aver.
Hillsborough	9	397,788	44,199		4.44
DeSoto, Hardee, Highlands	1	45,391	45,391		7.25
Manatee	2	69,168	34,584	18.28	
Polk	4	195,139	48,785		15.27
Sarasota	2	76,895	38,448	9.15	
Pinellas	9	374,665	41,629	1.64	
Charlotte, Collier, Glades, Hendry, Lee	2	93,955	46,978		11.00
Indian River, Martin, Okeechobee, St. Lucie	2	87,959	43,980		3.92
Palm Beach	5	228,106	45,621		7.80
Broward	8	333,946	41,743	1.37	
Dade	22	935,047	42,502		0.43
Monroe	1	47,921	47,921		13.23
	117	4,951,560			